

FILED

DEC - 1 2005

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY McIVER, et al.,

Plaintiffs,

No. CIV S-01-1967 KJM

vs.

CALIFORNIA EXPOSITION & FAIR, et al.,

Defendants.

ISC, INC., et al.,

Plaintiffs,

No. CIV S-04-1790 KJM

vs.

CALIFORNIA EXPOSITION & FAIR, et al.,

Defendants.

ORDER

Upon review of the proposed consent decrees, and good cause appearing therefor,
THE COURT HEREBY ORDERS AS FOLLOWS:

1. The joint motion to file a third amended complaint is granted. The Clerk of Court is directed to file and docket as the third amended complaint the proposed complaint submitted as exhibit 3 to the joint motion filed September 16, 2005. The third amended

1 complaint does not name Earl Welsh as a plaintiff in case no. CIV S-04-1790 KJM. Plaintiff
2 Welsh is accordingly dismissed from this action.

3 2. The consent decrees are hereby approved with the clarifications and
4 modifications as set forth in the footnotes to the proposed decrees, attached hereto as Exhibits A
5 and B, and incorporated herein.

6 3. A settlement conference on the issue of attorneys' fees is set for December 16,
7 2005 at 9:00 a.m before the Honorable Gregory G. Hollows. Absent resolution by settlement of
8 attorneys' fees, any motion for attorneys' fees shall be filed within sixty days of the completion
9 of the settlement proceedings.

10 4. Any objections to the proposed consent decrees, as clarified and modified
11 herein, shall be filed within ten days from the date of this order. Failure to object shall result in
12 final entry of the consent decrees, as set forth in Exhibits A and B.

13 DATED: November 30, 2005.

14
15 
16 UNITED STATES MAGISTRATE JUDGE
17

18 006 mciver-isc.consent
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EXHIBIT A

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STATE OF CALIFORNIA

U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY MCIVER and HOLLYNN D'LIL,

Plaintiffs,

v.

THE CALIFORNIA EXPOSITION &
STATE FAIR, aka "Cal Expo"; STATE
OF CALIFORNIA; RAY CAMMACK
SHOWS, INC.; and DOES 1-5000,
Inclusive,

Defendants.

ISC, INC., CHRISTINE FITZGERALD,
CONNIE ARNOLD, RUSS BOHLKE, and
JEFFREY EVANS,

Plaintiffs,

v.

THE CALIFORNIA EXPOSITION &
STATE FAIR, aka "Cal Expo"; STATE OF
CALIFORNIA; RAY CAMMACK
SHOWS, INC.; and DOES 1-5000,
Inclusive,

Defendants.

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CASE NO. S-2:01-1967 KJM
Civil Rights

CONSENT DECREE WITH COURT
ANNOTATIONS

CASE NO. CIV-S-04-1790 KJM
Civil Rights

Related Action

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I. RECITALS

A. Plaintiffs HolLynn D'Lil and Larry McIver are each persons with a Mobility Disability who regularly use the public facilities at California Exposition and State Fair (Cal Expo), located at 1600 Exposition Boulevard in Sacramento, California.

B. Cal Expo's facilities are located on approximately 364 developed acres. Public and private events held at Cal Expo during the year draw approximately 3 million visitors, though many events are produced, operated, planned and maintained by third-party promoters who contract with Cal Expo for the use of the grounds.

C. Plaintiffs D'Lil and McIver filed this action, known as McIver et. al. v. California Exposition & Fair, et. al., in Superior Court in 2001.¹ On October 23, 2001, the action was removed to U.S. District Court, and assigned Case No. S-01-1967 GEB KJM ("McIver Action"). Plaintiffs filed the McIver Action on behalf of themselves and all other similarly situated members of the public² to enforce provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. 12101 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and California's Civil Rights laws, including among others, the Unruh Civil Rights Act (California Civil Code §§ 51 et. seq.), California Civil Code §§ 54 et. seq., California Government Code §§ 4450 et. seq. and 11135, and Health and Safety Code §§ 19952 and 19955 against inter-alia, Defendants THE CALIFORNIA EXPOSITION & STATE FAIR and the STATE OF CALIFORNIA ("Defendants").³

¹ Michael Dunne was also a Named Plaintiff. He was dismissed without prejudice by Order dated October 14, 2004.

² **COURT:** As the court previously has advised the parties, it does not believe this decree can be enforced to prevent parties not in privity with plaintiffs from bringing actions if such parties otherwise have the right to do so. See Headwaters, Inc. v. U.S. Forest Service, 399 F.3d 1047, 1052-54 (9th Cir. 2005). The court notes plaintiffs have never sought class certification or demonstrated to the court in a manner to support the court's independent determination that this consent decree is structured to protect "strangers" to this case. Id. at 1056. Thus, the court approves the decree's incorporation of language referencing "similarly situated members of the public" only to the extent allowable by law, with resolution of res judicata to be resolved by litigation in the future to the extent the question is raised by future filings.

³ This Consent Decree does not apply to Ray Cammack Shows, Inc.

D. The current operative complaint is Plaintiffs' Second Amended Complaint, filed June 2, 2002. Plaintiffs will request permission to file a Third Amended Complaint in conjunction with the submission of this Consent Decree to include the claims of certain named plaintiffs in ISC v. Cal Expo, et al., Superior Court No. 03AS05963 (hereafter "ISC State Action") and ISC v. Cal Expo, et al., U.S.D.C., E. Dist. of Calif., No. CIV-S-04-1790 KJM (Hereafter "Federal ISC Action"). (Hereafter, the two ISC cases may be referred to as "The ISC Actions."). McIver Plaintiffs D'Lil and McIver, and named ISC Plaintiffs Christine Fitzgerald, Connie Arnold, Russ Bohlke, Jeffrey Evans and ISC, Inc. and Defendants Cal Expo and the State of California have agreed, along with Defendant Ray Cammack Shows, Inc., who is not a party to this Consent Decree, to jointly stipulate to Plaintiffs' filing of a Third Amended Complaint. The individual named plaintiffs (excluding ISC, Inc.) are each persons with a Mobility Disability and/or Vision Disability who regularly use the public facilities at Cal Expo.

E. The Parties joint stipulation provides that if the Court grants Plaintiffs leave to file a Third Amended Complaint that will incorporate the above-named ISC Plaintiffs and their claims, that the Federal and State ISC Actions will be dismissed, if and when the Court approves the Consent Decree as provided elsewhere herein. The Parties stipulation further provides, *inter alia*, that the ISC Plaintiffs factual allegations incorporated into the Third Amended Complaint shall relate back to the date of the original filings of the respective Federal and State ISC Actions, all Named Plaintiffs' claims for attorneys fees, litigation expenses and costs incurred in the State and Federal ISC actions shall be deemed incurred in the present McIver action, and for this purpose the three actions shall be deemed inextricably intertwined.⁴

⁴ **COURT:** The court adopts the parties' stipulation regarding the relation back of claims with the clarification that the stipulation will be enforced to the extent allowable by law with the status of the law to be litigated at the time of any dispute based on the relation back doctrine.

F. The parties contemplate and understand that this Consent Decree and the 10-Year Plan set forth in detail the physical alterations to be made by Defendant, and fully resolve any and all injunctive relief issues relating to Mobility and Vision Disabilities.⁵

G. The Second Amended Complaint alleges that Defendants violated Title II of the ADA, Section 504 of the Rehabilitation Act, California Civil Code §§ 51 and 54.1, and California Government Code §§ 4450 *et seq.* and 11135, by failing to provide full and equal access to the disabled at Cal Expo's facilities, including its theaters, shows, arenas, grandstands, stadiums, museums, exhibits, pavilions, amusements, arcades, restaurants, concessions, picnic areas, service and merchandise facilities, places of public gathering and/or admission, as well as its parking facilities, paths of travel, entrances, public restrooms, and all other facilities at Cal Expo.

H. Defendants deny any and all liabilities to Named Plaintiffs, defined further herein, and deny that Defendants have violated any laws – federal, state, or local – pertaining to access for persons with disabilities at Cal Expo's facilities as described above. It is understood that this agreement is a compromise of disputed claims and any payment or agreement to perform any action is not to be construed as an admission of liability by Defendants.

I. The Parties desire to resolve their differences and disputes by settling the declaratory and injunctive relief claims in the McIver lawsuit, as well as the declaratory and injunctive relief claims of all ISC Plaintiffs (to be incorporated into the McIver lawsuit through the Third Amended Complaint), subject to amendment, so as to:

1. Provide programmatic access to existing facilities at Cal Expo for qualified individuals with disabilities, including Mobility and Vision Disabilities, as required under federal and state law;

⁵ Plaintiffs' Experts, Barry Atwood and Karl Danz, prepared a 19 volume report and 200 page Summary Report identifying alleged barriers to access. The signatory defendants are not required by this Decree to perform the work described in the Atwood/Danz Report. It is referred to here and defined below for the purpose of describing the scope contemplated by the negotiations and compromise reached in this matter.

2. Provide structural access to all facilities at Cal Expo that have been newly constructed or altered (prior to Court Approval of this Consent Decree) as required under federal and state law for qualifying individuals with disabilities;

3. Assure that no one, including the Named Plaintiffs, nor other persons similarly situated, will attempt to enforce conflicting standards at Cal Expo regarding compliance with Title II of the ADA, Section 504, and California disability access laws;⁶

4. Assure that pursuant to the holding of Headwaters, Inc. v. U.S. Forest Service (2005) 399 F.3d 1047, 1052, no one found to be in privity and adequately represented by the Named Plaintiffs in this action, including the Named Plaintiffs, nor other persons similarly situated, shall hereafter assert the same claims for injunctive relief (arising out of the same nucleus of fact necessary to establish liability) that Defendants are required to make additional and/or different modifications to Cal Expo's facilities or that Defendants are required to follow different standards beyond what is agreed to herein in order to comply with the existing obligations under provisions of Title II of the ADA, Section 504, or California disability access laws;⁷ and

5. Avoid the uncertainties and costs of further and future litigation for all parties.

J. Furthermore, Cal Expo's self-evaluations and Transition Plans, previously created pursuant to the Americans with Disabilities Act to ensure access to its programs, services, activities and facilities, are hereby supplemented and amended by this Consent Decree and the 10-Year Plan.

WHEREFORE, the Parties hereby agree and stipulate to the Court's entry of this Consent Decree and Order, which provides as follows:

II. JURISDICTION

The Parties agree that the Court has original federal question jurisdiction over this matter pursuant to Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 *et seq.*; and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794. The Court has

⁶ COURT: See footnote 2 above.

⁷ COURT: See footnote 2 above.

1 supplemental jurisdiction over attendant and related causes of action arising from the same facts
 2 that are brought under California law, including but not limited to violations of Government Code
 3 Sections 4450 et seq. and 11135, including Section 4456; Title 24 California Code of Regulations;
 4 and California Civil Code Sections 51, 54 and 54.1.

5 The parties additionally acknowledge that for each disability classification covered by this
 6 decree, the Named Plaintiffs as a group have standing for Article III purposes to pursue the
 7 injunctive relief claims resolved by this decree, and have so sufficiently demonstrated with
 8 verifiable evidence of their disability, and their injury and future injury through sufficient exposure
 9 and use of the park and its facilities covered hereunder. The parties stipulate, however, that the
 10 foregoing acknowledgement shall constitute privileged and confidential settlement matter that shall
 11 not be admissible as evidence in any proceeding or trial concerning the damage claims of Named
 12 Plaintiffs.⁸

13 III. DEFINITIONS

14 As used in this Consent Decree, the following terms shall have the meaning ascribed to
 15 them in this Section. Except to the extent expressly stated to the contrary, any term not defined in
 16 this Section, or elsewhere in this Consent Decree, that has an expressly defined meaning in either
 17 the ADA or the regulations promulgated pursuant thereto ("Regulations") shall have the meaning
 18 ascribed to it by the ADA or the Regulations, in that order of preference.⁹ All other terms shall be
 19 interpreted according to their plain and ordinary meaning.

20 A. 10-Year Plan

21 "10-Year Plan" means and refers to the document attached hereto as **Exhibit 1**, which
 22 supplements the previously created transition plans and self-evaluations, and which more
 23 specifically details the physical alterations to be made by Defendant Cal Expo.
 24

25
 26 ⁸ **COURT:** The court clarifies that while the parties apparently have agreed they will not
 27 seek to admit the information referenced here, determinations of admissibility shall be made by the
 court.

28 ⁹ **COURT:** The parties have represented to the court that in the case of a conflict as to
 meaning, the ADA will control.

B. ADA

“ADA” means and refers to the Americans with Disabilities Act as contained at 42 U.S.C. § 12101 *et seq.*

C. ADAAG

“ADAAG” means and refers to the Americans with Disabilities Act Accessibility Guidelines, codified at Appendix A to 28 Code of Federal Regulations, Part 36 and at Appendix A to 49 Code of Federal Regulations, Part 37.

D. Annual Obligation

“Annual Obligation”, which is described below in Section (VI) (A), means and refers to Defendant Cal Expo’s obligation to commit a specified level of funding annually to implement this Consent Decree and the Approved 10-Year Plan.

E. Approval

“Approved” or “Approval” means and refers to the approval by the Court in Case No. S-01-1967 KJM of the terms of this Consent Decree, the concurrent Stipulation for Leave to File the Third Amended Complaint, and the Court’s consent to maintain jurisdiction to interpret and enforce the terms of this Consent Decree.

F. Atwood/Danz Report

“Atwood/Danz Report” means the 19 Volume Report prepared by Plaintiffs’ Consultants, Barry Atwood and Karl Danz, and served on Defendants as part of expert designations in this case. The parties to this agreement shall each maintain a copy of Atwood/Danz Report, which will be made available upon request. It is not an exhibit to this document.

G. California Disability Access Laws

“California Disability Access Laws” refers to the Unruh Civil Rights Act, California Civil Code §§ 51 *et. seq.*, California Civil Code §§ 54 *et. seq.*, Government Code §§ 4450 *et seq.* and 11135, Health and Safety Code §§ 19952 and 19955, as well as those portions of the California Building Code (Title 24 of the Code of Regulations) that set forth scoping requirements for structural access in new and altered facilities.

H. Consent Decree

“Consent Decree” means and refers to this document, “Consent Decree and Order”.

I. Compliance Period

“Compliance Period” means and refers to the period of time described in Section “IV”.

J. Compliance

“Compliance,” “Compliant” and “Comply” mean and refer to substantial satisfaction of the dictates of this Consent Decree and its supporting documents, including the Work Plan and the performance standards specified herein.

K. Defendants

“Defendants” means and refers to the CALIFORNIA EXPOSITION & STATE FAIR, and its successors in interest, and the STATE OF CALIFORNIA.

L. Defense Counsel

“Defense Counsel” refers to the law firm of Porter, Scott, Weiberg & Delehant on behalf of Cal Expo, and the Office of the Attorney General on behalf of the State of California.

M. Mobility Disability

“Mobility Disability” means and refers to any physical impairment or condition that substantially limits an individual’s ability to move his or her body or a portion of his or her body and includes, but is not limited to, orthopedic and neuro-motor disabilities and any other impairment or condition that limits an individual’s ability to walk, maneuver around objects, ascend or descend steps or slopes, and operate controls. An individual with a Mobility Disability may use a wheelchair or motorized scooter for mobility, or may be Semi- Ambulatory.

N. Named Plaintiffs

“Named Plaintiffs” means and refers to Larry McIver and HolLynn D’Lil, ISC, Inc., Christine Fitzgerald, Connie Arnold, Russ Bohlke, and Jeffrey Evans.

O. Parties

“Parties” means and refers to the California Exposition & State Fair, State of California, HolLynn D’Lil and Larry McIver. If Plaintiffs are permitted to file a Third Amended Complaint, Parties” shall also include ISC Plaintiffs ISC, Inc., Christine Fitzgerald, Connie Arnold, Russ

Bohlke, and Jeffrey Evans.

P. Performance Standards

“Performance standards” shall mean and refer to those standards described and further defined in paragraph VI(D).

Q. Plaintiffs’ Counsel

“Plaintiffs’ Counsel” means and refers to Thimesch Law Offices.

R. Released Claims/Released Parties

“Released Claims” and “Released Parties” shall mean and refer to those claims and parties described and further defined in Section “V”.

S. The Court

“The Court” means and refers to the United States District Court for the Eastern District of California and specifically Magistrate Judge Kimberly J. Mueller unless she becomes unavailable, in which case another judge will be assigned to the case according to the Eastern District’s Local Rules.

T. Title 24

“Title 24” means and refers to the regulations set forth at Title 24 of the California Code of Regulations, 2001 edition, or the current version in effect at the time of planning and work, provided no undue burden is created by subsequent changes in the code.

U. Vision Disability

“Vision Disability” means and refers to any impairment or condition that substantially limits an individual’s ability to see. A person with a Vision Disability may be blind, legally blind, or may have poor or low vision, which is not correctable through conventional eye wear.

IV. COMPLIANCE PERIOD

A. Term of Compliance Period

The Parties agree that the Consent Decree shall become effective, and remain in effect for up to fifteen (15) years from the date of Court Approval. It shall terminate automatically fifteen (15) years after Approval unless otherwise terminated or extended as provided herein.

B. Monitoring in the Final Year

Any reports and inspections to be produced or made at the end of the final year shall be made pursuant and subject to Section "VII".

C. Disputes in the Final Year

If a dispute is pending at the time this Consent Decree would otherwise terminate, or arises from the Monitor's final report, the Consent Decree will remain in effect with respect to the issue(s) under dispute until the dispute is resolved and any obligations set forth as part of dispute resolution are implemented through the procedures specified in Section IX.

D. Effect of (IV) (B) & (C) on Annual Obligation

Neither (IV) (B) nor (IV) (C) serve to extend the Annual Obligation time limitations as discussed in Section "VI".

E. Early Termination

Any Defendant may petition the Court to terminate the Consent Decree at any time upon a showing that Cal Expo has fully complied with its terms. A petition brought under this provision should contain: (1) information demonstrating full compliance with and completion of the 10-Year Plan; and (2) information showing that Cal Expo has procedures to respond to issues concerning access to Cal Expo facilities in an ongoing manner. As an alternative to (1) above, the petition may demonstrate that any portion of the 10-year plan not yet performed is otherwise subject to Section (VI) (A)(6), (F)(2) or (G).¹⁰

The petition may contain any other information Defendant(s) believes is appropriate. Any Named Plaintiff may oppose or support such a motion.¹¹

F. Further Extension

Any Party may petition the Court for an extension of the Compliance Period, which shall

¹⁰ **COURT:** All of the subsections identified here are found in Section VI.

¹¹ **COURT:** To the extent any plaintiffs support early termination, the parties are encouraged to enter into a stipulation confirming their agreement and submit a proposed order to the court.

be granted for good cause shown pursuant to Section (VI) (A)(6), (F)(2) or (G).¹² Any Party may oppose or support such a motion.

V. RELEASE OF INJUNCTIVE AND DECLARATORY RELIEF CLAIMS

Except as otherwise provided in this Consent Decree, and subject to the fulfillment of the conditions set forth in this Consent Decree, all Named Plaintiffs, for themselves, their successors and their assigns, in return for the consideration provided for in this Consent Decree, hereby release and forever discharge Defendants and their predecessors in interest, successors, assigns, officers, directors, agents, attorneys, employees, contractors, lenders, insurers, and owners ("Released Parties") from any and all injunctive and/or declaratory relief actions, causes of action, claims, or other demands under the Americans with Disabilities Act, the Rehabilitation Act of 1973, and all California disability access laws listed or contained within the operative complaint ("Released Claims"). Named Plaintiff's claims for damages and attorney's fees, litigation expenses and costs are not released by this Consent Decree and are hereby expressly reserved. The parties have recently settled the individual damage claims of plaintiffs Larry McIver and HolLynn D'Lil, which settlement is contingent upon execution of a standard release, the Court's approval of this Consent Decree, and payment of consideration.¹³

This Consent Decree shall be a full, complete, and final disposition and settlement of any claims for declaratory and injunctive relief that have been or could have been alleged in Federal or State Court. With respect to the Released Claims resolved by this Consent Decree and Order, the Named Plaintiffs acknowledge that they waive the provisions of and any benefits that may be conferred by Civil Code section 1542 which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN

¹² COURT: See footnote 10 above.

¹³ COURT: As of September 26, 2005, all remaining plaintiffs' damages claims also have been settled.

1 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
2 **SETTLEMENT WITH THE DEBTOR.**

3 **VI. INJUNCTIVE RELIEF**

4 The Parties hereby agree that, upon Approval of the Consent Decree, Cal Expo shall
5 comply with the following to provide further access to Cal Expo's facilities:

6 **A. Annual Obligation**

7 **1.** During the Compliance Period, Cal Expo will annually dedicate funding to
8 implement its 10-Year Plan as follows: \$100,000 per year in the first five (5) years with one (1)
9 of those years being \$150,000 (which year shall be chosen by Cal Expo and based solely on its own
10 discretion); \$133,000 per year for years six (6) through ten (10); and \$100,000 per year for each
11 additional year (eleven (11) through fifteen (15)), if any.

12 **2.** Spending more than the Annual Obligation in any given year will not
13 decrease the Obligation for any other year.

14 **3.** To the extent Cal Expo obtains additional funding from private sources for
15 access improvements, such funding will supplement this Obligation.

16 **4.** The Annual Obligation shall coincide with Cal Expo's fiscal year, which
17 runs from January 1 to December 31, or any pro-rated portion thereof should the consent decree
18 be approved, or should the Compliance Period end, on a date other than the first or last day of the
19 year.

20 **5.** Work to be performed pursuant to the 10-Year Plan may be performed by
21 outside contractors, Cal Expo employees, or by a combination of both, in Cal Expo's discretion.
22 The cost of actual expenditures, not the value of the improvements, will be utilized to measure
23 compliance with this provision. The value of services or tasks performed by Cal Expo on an "in-
24 house" basis will be credited toward compliance with the Annual Obligation pursuant to Cal
25 Expo's reimbursable rate as published.

26 **6.** Cal Expo may, in case of substantial financial hardship (and according to
27 the procedural requirements for motions under the Court's local rules), petition the Court for relief
28 from the Annual Obligation by July 31 of each year. The Court shall provide such relief upon a

sufficient showing of financial hardship. However, any relief granted in a fiscal year will terminate upon the commencement of the following fiscal year unless ordered otherwise. It is understood that the relief contemplated by this section is based on necessity and will be granted only for good cause shown. The amount of any reduction in the Annual Obligation granted by the Court pursuant to this section shall carry-forward and be added to the Annual Obligation imposed for the following year, subject to the Court's discretion.

B. 10-Year Plan

Cal Expo shall perform the work required by the 10-Year Plan, **Exhibit "1"** hereto, subject to the terms of this Decree.

C. New Construction and Alterations

The cost of newly constructed or altered facilities performed¹⁴ after Court Approval shall not reduce, offset, nor increase the Annual Obligation.

D. Performance Standards

All of the work to be performed herein under the 10-Year Plan shall be done in strict compliance with the requirements of California Code of Regulations Title 24 and ADAAG, whichever provides the stronger or greater level of protection to the affected disability classification in terms of access, safety and protection, unless a lower standard, design, or measurement is specified in the 10-Year Plan. Use of shorthand terms such as "move", "lower", "retrofit" and "regrade" shall be construed to require such compliance. This provision is subject to (VI) (A)(6), (F)(2) and (G).¹⁵

E. Construction Tolerances

The work to be performed hereunder shall allow for any recognized construction tolerances provided by state or federal law. This includes, but is not limited to, the construction tolerances provided in the Handbook of Construction Tolerances, David Ken Ballast, McGraw Hill, 1994.

¹⁴ **COURT:** The court reads the word "performed" as "incurred by Cal Expo."

¹⁵ **COURT:** See footnote 10 above.

F. Timeliness

Defendant Cal Expo will complete the work required by the 10-Year Plan within ten (10) years, or within fifteen (15) years if despite its best and good faith efforts the work is not completed by the end of year ten (10), or alternatively if necessitated by the application of relief described in (VI) (A)(6), (F)(2) or (G).¹⁶ Any extension of time must be obtained pursuant to Section (IV)(F) above and changes or deletions to the 10-Year Plan will be set forth to the Monitor as required by Section (VII) (B) or a Motion for Early Termination pursuant to Section (IV).

1. Permits and Planning

Cal Expo shall apply to the appropriate local authority for any permits, if any are required, for work to be performed herein, in a timely manner (i.e. calculated to allow for completion of the work as specified in the 10-Year Plan) and Cal Expo shall prepare for work to be performed in a timely manner.

2. Force Majeure

Subject to the requirements of this Section, the time for performance shall allow for good faith interruptions due to inclement weather, contractor unavailability, permit delays not caused by Defendants, and other recognized causes under the Doctrine of Force Majeure.

G. Change in Circumstance

Subject to the requirements of this section, Defendants shall not be required to perform work or other acts required by this Consent Decree, and the 10-Year Plan thereto, that is rendered moot or impossible by a material change in circumstance, such as the permanent closure of affected facilities from public use. Defendant shall set forth any claim under this part in its annual report to the Monitor as required by Section (VII) (B) and any such claim shall be subject to the Dispute Resolution Procedure of Section (X).

H. Exclusions

The Parties specifically exclude from the scope of this Consent Decree, and the 10-Year Plan, the access obligations imposed by state and federal law for all building additions and facilities

¹⁶ COURT: See footnote 10 above.

newly constructed, altered, structural repaired or¹⁷ after the date of Court Approval of this Decree, and exclude the facilities at Cal Expo currently and commonly known as the Administration Building, Backstretch, Water World and Paradise Island.

VII. REPORTS AND MONITORING

A. Independent Monitor

To assist in ensuring compliance with this Consent Decree, Cal Expo will hire, consistent with State contracting requirements, a person or firm with substantial experience and expertise in disability access requirements. Cal Expo has selected and Named Plaintiffs have approved Zachary Nathan as the Independent Monitor. Mr. Nathan was selected from a list of at least ten individuals that Named Plaintiffs provided to Cal Expo. Mr. Nathan has accepted this assignment. If Mr. Nathan becomes unwilling to fulfill the duties of the post, or becomes unavailable at anytime during the term of the Consent Decree, the Parties will tender the issue to the Court for appointment of a new Independent Monitor. The Court will set the procedure for the Parties to conduct briefing and argument, or for the Court's review of qualifications.¹⁸

B. Annual Reports

1. The schedule provided by the 10-Year Plan shall control the work that Cal Expo is to perform in the first year. After the first year, and by July 31 of year two and each subsequent year of the Compliance Period, Cal Expo shall prepare a report setting forth a prospective plan of projects Cal Expo shall undertake to comply with its 10-Year Plan in the coming fiscal year, except that this shall not apply in the final year of the compliance period.

2. By July 31 of each year of the Compliance Period, and within 60 days of the end of the final year, Cal Expo will prepare a report describing the actual work done to implement the requirements of the 10-Year Plan and this Consent Decree during the previous fiscal year. In

¹⁷ **COURT:** The court reads the preceding three words as "or structurally repaired."

¹⁸ **COURT:** If the parties are able to identify a mutually agreeable successor Independent Monitor, in the event of Mr. Nathan's unavailability, they shall provide written notice of the successor's selection in the form of a stipulation and proposed order, precluding the need for briefing.

1 addition to summaries of work done by Cal Expo to comply with the 10-Year Plan, such annual
2 report will also include:

3 a. A summary or listing of all written complaints or requests for
4 removal of particular barriers received since the prior report.

5 b. Summaries of work done to ensure access and/or remove access
6 barriers in conjunction with new construction and or alterations at Cal Expo.

7 c. Information regarding implementation of the 10-Year Plan, or relief
8 from its requirements, obtained pursuant to applicable provisions of this Consent Decree.

9 3. Cal Expo shall provide a copy of the reports required by this Section to the
10 Monitor and Plaintiffs' Counsel by August 31 of each year of the Compliance Period and within
11 60 days of the end of the final year.

12 **C. Monitoring**

13 1. During the Compliance Period and within 60 days after the production of
14 each Annual Report required by Section VII(B), the Monitor will inspect such of the work that has
15 been completed as he deems necessary, and subject to the limitations placed on the hours for which
16 the Monitor will be compensated each year, to ensure that such work satisfies the requirements of
17 the 10-Year Plan. The Monitor shall be granted reasonable access to Cal Expo's grounds upon
18 request and within 72 hours of such a request, including during the time of the State Fair and other
19 events.

20 2. Within 30 days of inspection, the Monitor will produce a report of findings
21 and provide a copy of that report to Cal Expo and Plaintiffs' Counsel. Cal Expo will have 90 days
22 thereafter to remedy identified failures to satisfy the requirements of the 10-Year Plan, or 30 days
23 to determine that there is a dispute regarding compliance, and notify Plaintiffs' Counsel of their
24 position. Plaintiffs and Plaintiffs' Counsel must raise any issue or dispute with regard to the
25 Monitor's findings or report within 70 days of production of the report. Any dispute will be
26 resolved through the Dispute Resolution Procedure set forth at Section (IX).

27 **D. Compensation for Monitoring**

28 1. During each year of the Compliance Period, Cal Expo will pay Plaintiffs'

Counsel up to a maximum of \$3,000 under this Section, and at a reasonable hourly market rate, for review of monitor reports, communications with the monitor, consultants, plaintiffs, and defendants, and inspections, research, and informal resolution efforts. The cap shall also apply to any reasonable costs or litigation expense incurred, including the cost of consultants. The cap shall not apply to any motion work and appearances undertaken pursuant to the procedures in Section (IX). Plaintiff's Counsel agrees to donate, pro bono, the first 5 hours of his time in any given calendar year toward resolution efforts. Plaintiffs' Counsel will submit detailed records of fees and costs quarterly. The fees provided by this section shall not preclude the Court from awarding fees and costs to Plaintiff's Counsel for any motion and formal enforcement work undertaken pursuant to the dispute resolution process specified under Section (IX)(D).

2. During each year of the Compliance Period, Cal Expo shall pay the approved Monitor for up to 16 hours for on-site inspections and for up to 30 additional hours for preparation of reports and any other document or act that may be required of the Monitor, or undertaken by same, pursuant to this Section, subject to maximum total payments of \$6,000 per year, which amount will be increased each year starting at the beginning of year two pursuant to the standard inflation rate published yearly by the U.S. Department of Labor, which is based on the Consumer's Price Index. The Monitor will submit detailed records of fees and costs quarterly to Cal Expo.

3. Cal Expo shall pay such sums directly to the individual to whom it is owed and such sums shall not be credited against Cal Expo's Annual Obligation.

4. The Parties may meet and confer regarding monitoring fee and/or cost issues. In the event that a dispute arises, the Parties will proceed under the Dispute Resolution process of Section (IX).

E. Administrative Liaison

Cal Expo shall designate an employee to serve as an administrative liaison to the Monitor and to Plaintiffs' Counsel regarding Cal Expo's compliance with this Consent Decree. The liaison

1 shall be responsible for coordinating and providing all reports required¹⁹ by this Section, and to
2 respond to requests for information.

3 **VIII. APPROVAL OF CONSENT DECREE**

4 Within thirty (30) days following Cal Expo's approval of this Consent Decree, the Parties
5 shall jointly move the Court for an Order granting its Approval. The Parties agree to seek such
6 Approval from the Honorable Kimberly Mueller, Magistrate Judge, U.S. District Court for the
7 Eastern District of California. Magistrate Judge Mueller has indicated her willingness to oversee
8 the approval and enforcement process, and she possesses knowledge of this case's history and an
9 understanding of the numerous technical and legal issues presented in this case.

10 **IX. DISPUTE RESOLUTION**

11 **A. Continuing Jurisdiction**

12 The Parties agree that the Court may retain jurisdiction to interpret and enforce the terms
13 of this Consent Decree for the duration of the Compliance Period. The Parties further agree to
14 request that this authority be delegated to Magistrate Judge Kimberly Mueller in accordance with
15 28 U.S.C. § 636(c). Should Magistrate Judge Mueller become unavailable at any time during the
16 Compliance Period, the Parties shall jointly request that another Magistrate Judge be assigned in
17 accordance with the Eastern District's Local Rules.

18 **B. Joint Agreement and No Contempt Citation or Decree**

19 The Parties agree that if they or any of them seek Court enforcement of this Consent Decree
20 and Order, they shall do so pursuant to this Section. No Party will seek a contempt citation or
21 decree.

22 **C. Dispute Resolution Process**

23 Except as otherwise set forth herein, the Parties agree that all disputes concerning
24 interpretation, implementation, and/or compliance with this Consent Decree shall be resolved as
25 follows:
26
27

28 ¹⁹ **COURT:** The court understands the reports referenced here to mean those required of Cal Expo.

1 1. The Party wishing to initiate the dispute resolution process shall notify the
2 other Party(ies) and the other Party's(ies') counsel in writing of the nature of the dispute, including
3 a reasonable explanation of the legal and factual basis of the dispute.

4 2. The Parties to the dispute will then meet and confer in order to attempt to
5 resolve the dispute directly.

6 3. If the Parties involved in the dispute cannot resolve a dispute directly, they
7 will request a mediation conference with the Court.

8 4. Should mediation with the Court prove unsuccessful, either Party involved
9 in the dispute can bring a motion to enforce the Consent Decree before the Court. In accordance
10 with 28 U.S.C. § 636(c), the Parties consent to allow a decision by a Magistrate of the Court,²⁰
11 acting to interpret and/or enforce the Consent Decree, to be appealed directly to the Ninth Circuit
12 Court of Appeals.

13 **D. Fees and Costs for Dispute Resolution**

14 1. Any litigation expenses, including expert fees and costs, attorney fees and
15 court costs may be awarded by the court pursuant to Christianberg Garment Co. v. EEOC, 434 U.S.
16 412 (1978) or other standard deemed applicable by the court.

17 2. If an award of fees and costs is issued against Cal Expo pursuant to this
18 Section, those fees and costs will not be paid out of the Annual Obligation unless the Court, in
19 equity, determines such is appropriate.

20 3. If an award of fees and costs is issued in favor of Cal Expo, such obligation
21 will be the joint and several responsibility of the moving/opposing Party(ies), whichever is
22 applicable.

23 **E. Delay Due to Dispute Resolution**

24
25
26 ²⁰ **COURT:** The parties previously have consented to Magistrate Judge Mueller for all
27 purposes. The court reads this section as confirming the parties' consent and their intent to submit
28 any motions regarding enforcement of the Consent Decree to Magistrate Judge Mueller. If a
successor to Magistrate Judge Mueller is assigned to this case, the procedures and rules applicable
in the Eastern District of California at the time of such assignment will govern who exercises
dispositive authority at the district court level in this case.

The Parties agree that, if access work under the 10-Year Plan scheduled by Cal Expo is delayed by the Parties in the dispute resolution process, the time deadlines for such access work shall be extended a commensurate period of time.

X. ATTORNEYS' FEES AND COSTS

Upon Approval of this Consent Decree Cal Expo will pay Plaintiffs' Counsel's reasonably incurred interim statutory attorneys fees, litigation expenses and costs incurred in the McIver and the ISC Actions, if the Parties reach agreement on the total amount owed, within sixty (60) days after Approval. Such fees shall be paid within thirty (30) days of reaching an agreement. The Parties request that the Court set a Settlement Conference before a Magistrate Judge to assist the Parties in resolving this claim.

If the Parties do not reach agreement on the amount of reasonable interim attorney fees, litigation expenses and costs within sixty (60) days after Approval, Plaintiffs' Counsel may thereafter file within sixty (60) days a Motion to recover such fees, litigation expenses and costs (including any available enhancement) for determination by the Court. Any litigation expenses, including expert fees and costs, attorney fees and court costs may be awarded by the court pursuant to Christianberg Garment Co. v. EEOC, 434 U.S. 412 (1978) or other standard deemed applicable by the court.

Notwithstanding any statement in this Decree regarding Defendants' dispute of the allegations and/or non-admission and denial of liability, the Parties agree that Plaintiffs have prevailing party standing to make a motion for reasonable fees, litigation expenses and costs. Defendants reserve all rights to oppose such a motion.

The Court's fees and costs determination shall be an order appealable directly to the Ninth Circuit Court of Appeals.

XI. CONTINUING JURISDICTION

The Court shall retain continuing jurisdiction to interpret and enforce the Consent Decree as provided herein and to determine fees, litigation expenses and costs, if necessary. The Court shall also retain jurisdiction to resolve Plaintiff's remaining claims for statutory and compensatory damages. Each and all of the agreements of the Parties in this Consent Decree are contingent upon

1 the Court granting leave for Plaintiffs to file a Third Amended Complaint as contemplated herein,
2 and the Court's acceptance of aforesaid continuing jurisdiction.

3 **XII. MISCELLANEOUS**

4 **A. Counterparts**

5 This Consent Decree may be executed in counterparts, each of which will be considered
6 an original, but all of which, when taken together, will constitute one and the same instrument.
7 Facsimile signatures shall be considered valid as of the date thereof, although the original signature
8 pages shall thereafter be appended to this Consent Decree and filed with the Court.

9 **B. Interpretation**

10 The language of this Consent Decree will be construed as a whole according to its fair
11 meaning, and not strictly for or against any of the Parties. The headings in this Consent Decree are
12 solely for convenience and will not be considered in its interpretation. Where required by context,
13 the plural includes the singular and the singular includes the plural. This Consent Decree is the
14 product of negotiation and joint drafting so that any ambiguity will not be construed against any
15 Party.

16 **C. Severability**

17 In the event any portion of this Consent Decree is deemed to be unenforceable, or is in
18 conflict with applicable law, the remainder of this Consent Decree will be enforced and will remain
19 in full force and effect.

20 **D. Non-Determination**

21 The Court has made no findings concerning alleged violations of any law, whether state or
22 federal, local, regulation, order or rule at this time, and the Parties expressly reserve the right to
23 litigate these matters if this Consent Decree does not receive Approval. The Parties agree that
24 nothing in this Consent Decree may be interpreted as an admission by any Party of any fact, legal
25 principle, or conclusion. If, for any reason, Approval is not obtained, no evidence of this proposed
26 Consent Decree shall be admissible for any purpose in The McIver Action, either of the ISC
27 Actions, or other actions to be brought by Named Plaintiffs or Plaintiffs' Counsel.

28 **E. Entire Agreement**

1 This Consent Decree, including its Exhibit, expresses and constitutes the sole and entire
 2 agreement between the Parties and supersedes all prior agreements, negotiations and discussions
 3 between the Parties and/or their respective counsel with respect to the subject matter of the McIver
 4 Action, the ISC Actions, and/or this Consent Decree. The Consent Decree supersedes any prior
 5 or contemporaneous oral or written agreements or understandings between and among the Parties
 6 and/or counsel for the Parties regarding the subject matter of the McIver Action, the ISC Actions
 7 and/or this Consent Decree.

8 **F. Additional Documents**

9 To the extent any documents are required to be executed by any of the Parties to effectuate
 10 this Consent Decree, each Party hereto agrees to execute and deliver such and further documents
 11 as may be required to carry out the terms of this Consent Decree.

12 **G. Cal Expo's Approval**

13 The signature herein below of Brian May, a Cal Expo Assistant General Manager, indicates
 14 that he has obtained prior approval of this document through Cal Expo's Board of Directors.

15 **H. Authority**

16 Each Party represents to all other Parties that such Party has the full power and authority
 17 to enter into this Consent Decree, that the execution and delivery thereof will not violate any
 18 agreement to which such Party is a party or by which such Party is bound, and that this Consent
 19 Decree, as executed and delivered, constitutes a valid and binding obligation of such Party,
 20 enforceable in accordance with its terms. The signatories to this Consent Decree expressly warrant
 21 that they have been authorized to execute this Consent Decree and to bind their respective Parties
 22 to the terms and provisions herein.

23 **I. Knowing Agreement**

24 Each Party to this Consent Decree acknowledges that it has been represented by legal
 25 counsel, and that each Party has reviewed, and has had the benefit of legal counsel's advice
 26 concerning, all of the terms and conditions of this Decree.

27 **J. Successors**

28 This Consent Decree shall be binding upon and inure to the benefit of the respective heirs,

successors, assigns and representatives of the Parties. To the extent permitted by law, the Parties intend that this Consent Decree and Order shall additionally be binding upon all persons with disabilities similarly situated to the Named Plaintiffs in relation to injunctive relief claims, and that the terms of this Consent Decree shall have the effect of res judicata and/or collateral estoppel against injunctive relief claims. However, the Decree shall not preclude claims for damages by persons with disabilities, if any, including under tort or as provided by statute.²¹

K. Non-Application to Defendant Ray Cammack Shows, Inc.

No part of this Consent Decree shall be construed to affect Named Plaintiffs' ongoing legal claims, or any actions, against Defendant RAY CAMMACK SHOWS, INC., which shall remain in full force and effect.²²

L. Appealability

Unless otherwise stated, any order issued by the Court pursuant to this Consent Decree shall be appealable to the Ninth Circuit Court of Appeals.

M. Deadlines

Any deadlines imposed under this Decree shall be subject to the extensions imposed by Fed. Rules of Civ. Pro., Rule 6.

Dated: September 9, 2005

TIMOTHY S. THIMESCH
THIMESCH LAW OFFICES


Attorney for Plaintiffs

Dated: _____, 2005

Plaintiff Hollynn D'Lil

Dated: _____, 2005

Plaintiff Larry McIver

²¹ COURT: See footnote 2 above.

²² COURT: Concurrently with its qualified approval of this Consent Decree, the court is approving a Consent Decree as to Ray Cammack Shows.

1
2 Dated: _____, 2005

Plaintiff Connie Arnold

3
4 Dated: _____, 2005

Plaintiff Russ Bohlke

5
6 Dated: _____, 2005

Plaintiff Christine Fitzgerald

7
8 Dated: _____, 2005

Plaintiff Jeffrey Evans

9
10 Dated: _____, 2005

Plaintiff ISC, Inc.
By and Through Officer Russ Bohlke
Authorized Representative

11
12
13 Dated: _____, 2005

STEPHEN E. HORAN, ESQ.
PORTER, SCOTT, WEIBERG & DELEHANT

14
15
16 Attorneys for Defendant
CALIFORNIA EXPOSITION & STATE FAIR

17
18 Dated: _____, 2005

Brian May, Assistant General Manager
Defendant CALIFORNIA EXPOSITION &
STATE FAIR

19
20
21 Dated: _____, 2005

CARYN L. CRAIG, ESQ.
OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA

22
23
24 Attorneys for Defendant
STATE OF CALIFORNIA²³

25
26
27
28 ²³ **COURT:** The court acknowledges receipt of a copy of the proposed consent decree signed by all parties and counsel, and submitted to the court on September 18, 2005.

EXHIBIT B

Thimesch Law Offices

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Attorneys for Plaintiffs

LARRY MCIVER, HOLLYNN D'LIL, ISC, INC., RUSS BOHLKE, CHRISTINE FITZGERALD, CONNIE
ARNOLD, and JEFFREY EVANS

BOYD F. JENSEN, II, ESQ. (No. 91058)
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Attorneys for Defendant RAY CAMMACK SHOWS, INC.

U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY MCIVER and HOLLYNN D'LIL,
Plaintiffs,

CASE NO. S-2:01-1967 KJM
Civil Rights

v.

THE CALIFORNIA EXPOSITION &
FAIR, aka "Cal Expo"; STATE OF
CALIFORNIA; RAY CAMMACK SHOWS,
INC.; and DOES 1-5000, Inclusive,
Defendants.

CONSENT DECREE WITH COURT
ANNOTATIONS

ISC, INC., RUSS BOHLKE, CHRISTINE
FITZGERALD, CONNIE ARNOLD, and
JEFFREY EVANS,

CASE NO. CIV-S-04-1790 KJM
Civil Rights
Related Action

Plaintiffs,

v.

THE CALIFORNIA EXPOSITION &
FAIR, aka "Cal Expo"; RAY CAMMACK
SHOWS, INC.; and DOES 1-50,000, Inclusive,

Defendants.

1. Plaintiffs LARRY MCIVER and HOLLYNN D'LIL filed the action
encaptioned McIver, et al v. Cal Expo & Fair et al Case No.: S-01-1967 KJM (Hereafter "McIver
Action") for themselves to enforce provisions of the Americans with Disabilities Act of 1990
("ADA"), 42 U.S.C. §§ 12101 et seq., and California's Civil Rights laws, against defendants RAY
CAMMACK SHOWS, INC. ("Defendant(s)" and/or "RCS"). Similarly, the plaintiffs ISC, INC.;

1 RUSS BOHLKE; CHRISTINE FITZGERALD; CONNIE ARNOLD; and JEFFREY EVANS filed
 2 two separate proposed class actions against RAY CAMMACK SHOWS, INC., filed two proposed
 3 class actions encaptioned ISC, Inc et al v. Cal Expo & Fair et al, Case No: CIV-S-04-1790 EJG JFM
 4 et al. (U.S. District Court, Eastern District of California-Sacramento) (Hereafter "ISC Federal
 5 Action"), and ISC, Inc et al v. Cal Expo & Fair et al Case No: 03AS05963 (Superior Court of
 6 California-Sacramento) (Hereafter, "ISC State Action"). The plaintiffs in the ISC actions likewise
 7 sought to ensure enforcement of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.
 8 §§ 12101 et seq. Hereafter, the Plaintiffs in the three actions, i.e., the McIver Action, the ISC
 9 Federal Action and the ISC State Action, shall be referred to collectively and alternately as
 10 "Plaintiffs" or "Named Plaintiffs."¹

11 2. Plaintiffs allege that Defendants violated Title III of the ADA, Section
 12 302(b)(2) [42 USC 12182(b)(2)], and the corresponding "full and equal" access provisions of
 13 California Civil Code Sections 51 and 54.1, et seq., by failing to comply with barrier removal
 14 provisions to full and equal access to their privately owned rides, concessions and attractions
 15 provided annually during the State Fair at Cal Expo in Sacramento, California.

16 3. Defendant RAY CAMMACK SHOWS, INC. denies these allegations, and
 17 by entering into this CONSENT ORDER, RCS does not admit liability to the allegations in
 18 plaintiffs' Complaint filed in this action. The Parties hereby enter into this CONSENT ORDER for
 19 the sole purpose of resolving this lawsuit without the need for protracted litigation.

20 **I. JURISDICTION**

21 4. The Parties agree that the Court has jurisdiction of this matter pursuant to
 22 28 USC §1331 for alleged violations of the Americans with Disabilities Act of 1990, 42 USC 12101
 23

24 ¹ Plaintiff Michael Dunne was originally a named plaintiff in the McIver Action, and
 25 Plaintiff Earl Welsh in the ISC Actions. Mr. Dunne was dismissed without prejudice by Order dated
 26 October 14, 2004. A similar Stipulation and Proposed Order is now pending in relation to Mr.
 27 Welsh.

28 **COURT:** The docket does not reflect the filing of a stipulation as to Mr. Welsh. The court's order
 approving this consent decree with clarifications and modifications dismisses Mr. Welsh as a party
 in this action.

1 *et seq.* and pursuant to pendant jurisdiction for alleged violations of California Civil Code Sections
 2 54; 54.1; 54.3; and 55. The Parties additionally acknowledge that for each disability classification
 3 covered by this decree, the Named Plaintiffs as a group have standing for Article III purposes to
 4 pursue the injunctive relief claims resolved by this decree, and have so sufficiently demonstrated
 5 with verifiable evidence of their disability, and their injury and future injury through sufficient
 6 exposure and use of the park and its facilities covered hereunder. The Parties stipulate, however, that
 7 the foregoing acknowledgment shall constitute privileged and confidential settlement matter that
 8 shall not be admissible as evidence in any proceeding or trial concerning the damage claims of
 9 Named Plaintiffs. The Parties stipulate, however, that the foregoing acknowledgment shall
 10 constitute privileged and confidential settlement matter that shall not be admissible as evidence in
 11 any proceeding or trial concerning the damage claims of Named Plaintiffs.²

12 **II. RECITALS**

13 5. The current operative complaint is Plaintiffs' Second Amended Complaint,
 14 filed June 2, 2002. Plaintiffs will request permission to file a Third Amended Complaint in
 15 conjunction with the submission of this Consent Decree to include the claims of certain named
 16 plaintiffs in ISC v. Cal Expo, et al., Superior Court No. 03AS05963 (hereafter "ISC State Action")
 17 and ISC v. Cal Expo, et al., U.S.D.C., E. Dist. of Calif., No. CIV-S-04-1790 KJM (Hereafter
 18 "Federal ISC Action"). (Hereafter, the two ISC cases may be referred to as "The ISC Actions."
 19 McIver Plaintiffs D'Lil and McIver, and named ISC Plaintiffs Christine Fitzgerald, Connie Arnold,
 20 Russ Bohlke, Jeffrey Evans and ISC, Inc. and Defendant Ray Cammack Shows, Inc., along with
 21 Defendants Cal Expo and the State of California, who are both not parties to this Consent Decree,
 22 have agreed to jointly stipulate to Plaintiffs' filing of a Third Amended Complaint. The individual
 23 Named Plaintiffs (excluding ISC, Inc.) are each persons with a Mobility Disability and/or Vision
 24 Disability who regularly use the public facilities at Cal Expo.

27
 28 ² **COURT:** The court clarifies that while the parties apparently have agreed they will not
 seek to admit the information referenced here, determinations of admissibility shall be made by the
 court.

6. The Parties joint stipulation provides that if the Court grants Plaintiffs leave to file a Third Amended Complaint that will incorporate the above-named ISC Plaintiffs and their claims, that the Federal and State ISC Actions will be dismissed, if and when the Court approves the Consent Decree as provided elsewhere herein. The Parties stipulation further provides, *inter alia*, that the ISC Plaintiffs factual allegations incorporated into the Third Amended Complaint shall relate back to the date of the original filings of the respective Federal and State ISC Actions, all Named Plaintiffs' claims for attorneys fees, litigation expenses and costs incurred in the State and Federal ISC actions shall be deemed incurred in the present McIver action, and for this purpose the three actions shall be deemed inextricably intertwined. The Parties agree that the factual allegations in the Third Amended Complaint shall relate back to the original filings in each of the respective individual actions. This stipulation is supported by standard principals relating to tolling agreements and waiver of defenses.³

7. The Parties contemplate and understand that this Consent Decree fully resolves any and all injunctive relief issues relating to Mobility and Vision Disabilities.⁴ The Parties agree that the Court has jurisdiction of this matter pursuant to 28 USC §1331 for alleged violations of the Americans with Disabilities Act of 1990, 42 USC 12101 *et seq.* and pursuant to pendant jurisdiction for alleged violations of California Civil Code Sections 54; 54.1; 54.3; and 55. For purposes of this consent decree, the Parties stipulate that each of plaintiffs have suffered and are suffering sufficient injury in fact to pursue this action on behalf of the general public interest, and

³ **COURT:** The court adopts the parties' stipulation regarding the relation back of claims with the clarification that the stipulation will be enforced to the extent allowable by law, with the status of the law to be litigated at the time of any dispute based on the relation back doctrine.

⁴ Plaintiffs' Experts, Barry Atwood and Karl Danz, prepared a 3 volume report identifying barriers to access on the midway, which shall provide helpful context as to this agreement. However, the signatory defendants are not required by this Decree to perform the work described in the Atwood/Danz Report. It is referred to here and defined below for the purpose of describing the scope contemplated by the negotiations and compromise reached in this matter.

1 have so demonstrated through sufficient evidence of exposure and use of the facilities and/or
2 deterrence.⁵

3 **III. DEFINITIONS**

4 8. As used in this Consent Decree, the following terms shall have the meaning
5 ascribed to them in this Section. Except to the extent expressly stated to the contrary, any term not
6 defined in this Section, or elsewhere in this Consent Decree, that has an expressly defined meaning
7 in either the ADA or the regulations promulgated pursuant thereto ("Regulations") shall have the
8 meaning ascribed to it by the ADA or the Regulations, in that order of preference.⁶ All other terms
9 shall be interpreted according to their plain and ordinary meaning.

10 **A. ADA**

11 "ADA" means and refers to the Americans with Disabilities Act as contained at 42
12 U.S.C. § 12101 et seq.

13 **B. ADAAG**

14 "ADAAG" means and refers to the Americans with Disabilities Act Accessibility
15 Guidelines, codified at Appendix A to 28 Code of Federal Regulations, Part 36 and at Appendix A
16 to 49 Code of Federal Regulations, Part 37.

17 **C. APPROVAL**

18 "Approved," "Approval" or "Court Approval" means and refers to the approval by
19 the Court in Case No. S-2:01-1967 KJM of the terms of this Consent Decree, the concurrent
20

21
22
23 ⁵ **COURT:** As the court previously has advised the parties, it does not believe this decree
24 can be enforced to prevent parties not in privity with plaintiffs from bringing actions if such parties
25 otherwise have the right to do so. See Headwaters, Inc. v. U.S. Forest Service, 399 F.3d 1047, 1052-
26 54 (9th Cir. 2005). The court notes plaintiffs have never sought class certification or demonstrated
27 to the court in a manner to support the court's independent determination that this consent decree
28 is structured to protect "strangers" to this case. *Id.* at 1056. Thus, the court approves the decree's
incorporation of language referencing "similarly situated members of the public" only to the extent
allowable by law, with resolution of res judicata to be resolved by litigation in the future to the extent
the question is raised by future filings.

⁶ **COURT:** The parties have represented to the court that in the case of a conflict as to
meaning, the ADA will control.

1 Stipulation for Leave to File the Third Amended Complaint, and the Court's consent to maintain
2 jurisdiction to interpret and enforce the terms of this Consent Decree.

3 **D. ATWOOD REPORT**

4 "Atwood Report" means the 3 Volume Report prepared by Plaintiffs' Consultant,
5 Barry Atwood, and served on Defendants as part of expert designations in this case. The report will
6 be maintained by plaintiffs' counsel and made available upon request by any Party or person.

7 **E. CALIFORNIA DISABILITY ACCESS LAWS**

8 "California Disability Access Laws" refers to the Unruh Civil Rights Act, California
9 Civil Code §§ 51 et. seq., California Civil Code §§ 54 et. seq., Government Code §§ 4450 and 1135
10 et. seq., Health and Safety Code §§ 19952 and 19955, as well as those portions of the California
11 Building Code (Title 24 of the Code of Regulations) that set forth scoping requirements for structural
12 access in new and altered facilities.

13 **F. CONSENT DECREE**

14 "Consent Decree" means and refers to this document, "Consent Decree and Order".

15
16 **G. COMPLIANCE**

17 "Compliance," "Compliant" and "Comply" mean and refer to substantial satisfaction
18 of the dictates of this Consent Decree and the performance standards specified herein.

19 **H. DEFENDANT**

20 "Defendant" means and refers to the RAY CAMMACK SHOWS, INC.

21 **I. DEFENSE COUNSEL**

22 "Defense Counsel" refers to the law firm of Garrett & Jensen.

23 **J. MOBILITY DISABILITY**

24 "Mobility Disability" means and refers to any physical impairment or condition that
25 substantially limits an individual's ability to move his or her body or a portion of his or her body and
26 includes, but is not limited to, orthopedic and neuro-motor disabilities and any other impairment or
27 condition that limits an individual's ability to walk, maneuver around objects, ascend or descend
28

1 steps or slopes, and operate controls. An individual with a Mobility Disability may use a wheelchair
2 or motorized scooter for mobility, or may be semi- ambulatory.

3 **K. NAMED PLAINTIFFS**

4 "Named Plaintiffs" means and refers to Larry McIver and HolLynn D'Lil, Christine
5 Fitzgerald, Connie Arnold, Russ Bohlke, Jeffrey Evans and ISC, Inc.

6
7
8 **L. PARTIES**

9 "Parties" means and refers to the California Exposition & State Fair, State of
10 California, HolLynn D'Lil and Larry McIver, Christine Fitzgerald, Connie Arnold, Russ Bohlke,
11 Jeffrey Evans and ISC, Inc.

12 **M. PERFORMANCE STANDARDS**

13 "Performance standards" shall mean and refer to those standards described and further
14 defined in paragraph VI(D).

15 **N. PLAINTIFFS' COUNSEL**

16 "Plaintiffs' Counsel" means and refers to Thimesch Law Offices.

17
18 **O. RELEASED CLAIMS/RELEASED PARTIES**

19 "Released Claims" and "Released Parties" shall mean and refer to those claims and
20 Parties described and further defined in Section "V".

21 **P. THE COURT**

22 "The Court" means and refers to the United States District Court for the Eastern
23 District of California and specifically Magistrate Judge Kimberly J. Mueller unless she becomes
24 unavailable, in which case another judge will be assigned to the case according to the Eastern
25 District's Local Rules.

26 **Q. TITLE 24**
27
28

“Title 24” means and refers to the regulations set forth at Title 24 of the California Code of Regulations, 2001 edition, or the current version in effect at time of planning and work, provided no undue burden is created by subsequent changes in the code.

R. VISION DISABILITY

“Vision Disability” means and refers to any impairment or condition that substantially limits an individual’s ability to see. A person with a Vision Disability may be blind, legally blind, or may have poor or low vision, which is not correctable through conventional eye wear.

IV. PURPOSE AND BINDING EFFECT

9. The Parties desire to resolve their differences and disputes by settling the declaratory and injunctive relief claims in the McIver lawsuit, as well as the declaratory and injunctive relief claims of all ISC Plaintiffs, subject to amendment of the claims and consent of the Parties, so as to:

10. Resolve the claims for programmatic access brought by plaintiffs against separate defendant California Exposition & State Fair to the Midway facilities at Cal Expo for qualified individuals with disabilities, including Mobility and Vision Disabilities, as required under federal and state law;⁷

11. Provide a means for physical access to certain negotiated rides, attractions and concessions as required under federal and state law for qualifying individuals with disabilities;

12. Assure that no one, including the Named Plaintiffs, nor other persons similarly situated, will attempt to enforce conflicting standards against the RCS’s carnival operation at Cal Expo regarding compliance with Title III of the ADA;⁸

13. Assure that, pursuant to the holding of Headwaters, Inc. v. U.S. Forest Service (2005) 399 F.3d 1047, 1052, no one found to be in privity and adequately represented by the Named Plaintiffs in this action, including the Named Plaintiffs, nor other persons similarly situated, shall

⁷ **COURT:** See footnote 5 above.

⁸ **COURT:** See footnote 5 above.

1 hereafter assert the same claims for injunctive relief (arising out of the same nucleus of fact
2 necessary to establish liability), which would require Defendants to make additional and/or different
3 modifications to RCS's carnival operation at Cal Expo or to follow different standards beyond what
4 is agreed to herein, in order to comply with the existing obligations under provisions of Titles II and
5 III of the ADA, Section 504, or California disability access laws;⁹ and
6
7

8 14. Avoid the uncertainties and costs of further and future litigation for all Parties.

9 15. Furthermore, RCS' self-evaluations, guides and efforts, previously undertaken
10 pursuant to the Americans with Disabilities Act to ensure access to its programs, services, activities
11 and facilities, are hereby supplemented and amended by this Consent Decree.

12 16. This Consent Decree shall be binding upon Plaintiffs, on behalf of themselves
13 and all their individual heirs, agents, assigns, attorneys, and all other successors-in-interest
14 (hereinafter jointly and collectively designated "PLAINTIFFS"), and RAY CAMMACK SHOWS,
15 INC., and all other ownership or successors in interest owners of RAY CAMMACK SHOWS, INC.,
16 and for its officers, directors, members, employees, franchisers, franchisees, licensees, attorneys,
17 agents, insurers, owners, purchasers, shareholders, members, parent companies, subsidiaries and
18 affiliates and all of their respective predecessors, successors and assigns (hereinafter collectively
19 referred to as "Defendants" and/or "RCS")).

20 17. The Parties agree to entry of this Order in order to resolve the below listed
21 allegations raised in the Second Complaint filed with this Court on June 7, 2002, the First Amended
22 Complaint filed in the ISC Federal Action filed on April 14, 2004, and the original complaint filed
23 in the ISC State Action on August 27, 2004. Accordingly, and subject to the Court's Approval of
24 consolidation and the filing of a Third Amended Complaint, the Parties agree to the entry of this
25 CONSENT DECREE without trial or further adjudication of any issues of fact or law concerning
26 the issues specified herein, and without prejudice to plaintiffs' reservation of remaining damage
27 claims and for attorney fees, litigation expenses and costs.
28

⁹ **COURT:** See footnote 5 above.

1 WHEREFORE, the Parties hereby agree and stipulate to the Court's entry of this
2 CONSENT ORDER, which provides as follows:

3 **V. RESOLUTION OF INJUNCTIVE RELIEF**

4 18. Except as specified in paragraph 38, below, this CONSENT DECREE shall
5 be a full, complete, and final disposition and settlement of the claims for injunctive relief that have
6 been or could have been alleged in the Complaint. The Parties agree that there has been no admission
7 or finding of liability or violation of the ADA and/or California civil rights laws, and this CONSENT
8 ORDER should not be construed as such. The Court shall retain jurisdiction of this action to enforce
9 and interpret this CONSENT DECREE. The Parties agree that if they or any of them seek Court
10 enforcement of this CONSENT DECREE and Order, any such enforcement will be by noticed
11 motion, application or other appropriate request for an order for specific performance and that a
12 contempt citation or decree will not be sought by any party.

13 19. With respect to the injunctive relief claims resolved by this Order, the Parties
14 acknowledge that they waive the provisions of and any benefits that may be conferred by Civil Code
15 section 1542 which reads:

16 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
17 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
18 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
19 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
20 **OR HER SETTLEMENT WITH THE DEBTOR.**

21 The provisions of this paragraph shall not affect the reserved issues specified in paragraph 38,
22 below.

23 **VI. INJUNCTIVE RELIEF**

24 20. The defendants agree to perform the following work to provide disabled
25 access:

A. RIDES AND ATTRACTIONS:

21. **Time for Compliance.** Unless other time periods are specifically set forth below, it is hereby agreed between the Parties hereto that the Rides and Attractions identified below will be made "accessible" in accordance with their accompanying provisions. Said obligations shall commence August 1, 2006 or the commencement of the California State Fair 2006. In the case of the Bumble Bee ride, the modifications shall be completed by August 1, 2008 or the commencement of the 2008 California State Fair.

22. **Ramps.** RCS will modify 5 rides to provide disabled access via a ramp to the respective loading platform. The 5 rides RCS designates are:

- 1) Bumble Bee
- 2) La Grande Wheel
- 3) Silver Streak
- 4) Sound Wave
- 5) Zipper

RCS may employ generic portable ramps that shall conform to the specifications provided for "ramps" under Title 24 and ADAAG regulations. The ramps shall be extended to the ride platform or to a point where the patron may touch a single ride vehicle. RCS shall develop a written policy and enforced practice of not using the aforementioned ramps (and any access ramps added to other rides in the future) for queuing customers. RCS shall further include within their training materials and corporate policies the requirement to utilize ramps for other rides where feasible, and exercise good faith in implementing and enforcing this provision.

23. **Further Ride Modifications.**

a) RAY CAMMACK agrees that the following list of rides shall be made further "accessible" in accordance with subparagraphs (b), (c) and (d), below:

- 1) Bad Lands Express
- 2) Bear Affair
- 3) Berry Go Round
- 4) Big Eli Wheel

- 1 5) Bumble Bee
- 2 6) Carousel
- 3 7) Chaos
- 4 8) Dragon Wagon
- 5 9) Free Fall
- 6 10) Ghost Pirates
- 7 11) Hi Miler
- 8 12) Kamikaze
- 9 13) Kite Flyer
- 10 14) La Grande Wheel
- 11 15) Lolly Swings
- 12 16) Orbiter
- 13 17) Rockin' Tug
- 14 18) Silver Streak
- 15 19) Sky Ride
- 16 20) Sound Wave
- 17 21) Spidermania
- 18 22) Toon Town
- 19 23) Tornado
- 20 24) Twist
- 21 25) Wave Runner
- 22 26) Yo Yo
- 23 27) Zipper

24 b) For all rides and attractions owned by RCS with fenced enclosures,
25 including, but not limited to, any ride or attraction with a fenced enclosure that is identified above
26 in subparagraph 23(a) and below and at paragraphs 22 and 25, the gated entries shall be modified
27 where necessary to strictly comply with Title 24 and ADAAG to provide a minimum clear opening
28 of 32 inches. This shall be accomplished within 3 years of the date of this Order. As new rides are

1 purchased, 32 inch entry widths shall be specified, and where old entry gates are replaced, the new
2 entry gates shall have 32 inch minimum clear openings. Thresholds at the modified, purchased and
3 replaced entrances shall not exceed 1/2 inch *beveled* per increment of rise.

4 c) For all rides and attractions owned by RCS, including, but not limited
5 to, any ride or attraction with a fenced enclosure that is identified above in subparagraph 23(a) and
6 below and at paragraphs 22 and 25, RCS shall prepare and maintain written materials and media
7 materials which can be used in training all current and future employees on the procedures and
8 policies regarding accessibility to Rides and Attractions. Said training shall be mandatory for all
9 employees on a yearly basis with reviews and on-the-job training as necessary. Said training shall
10 include operational guidelines; use of appropriate language, in the policies, procedures and signage
11 at or near Rides and Attractions; and the procedures for responding to special guest requests based
12 upon the nature of the disability, including temporary movement of fencing, gates or other barriers
13 normally required because of regulation or safety. A special section of the operating procedures for
14 each applicable attraction shall include the appropriate text and shall be maintained on a yearly basis
15 at a central location and available for inspection and training.

16 d) RCS shall provide appropriate signage for each of the applicable Rides
17 and Attractions indicating their accessibility to disabled patrons and applicable instructions.

18 e) RCS shall, on a yearly basis, prepare a written brochure which contains
19 a general description of all its rides and attractions, with explanations of their accessibility and
20 whether special procedures such as "Accessible Through Exit" as opposed to a regular queue line
21 apply. Said brochures shall be available at ticket booths and the Guest Relations Station. Accessible
22 midway routes will be explained in situations where the existence of cables or terrain would
23 otherwise prevent access to the midway.

24 24. The Parties agree that there are extraordinary situations depending on last
25 minute changes, for example ride replacements, extreme weather conditions or ride modifications
26 which could affect the ability of RCS to comply with these agreements respecting the Rides and
27 Attractions. It is agreed that RCS may deviate from compliance with these standards if upon the
28 exercise of good faith and reasonableness unanticipated changes, modifications or the weather make

1 compliance impractical or impossible. Such deviations shall be temporary and in no circumstance
2 exist longer than one season.

3 25. It is agreed that Rides and Attractions where loading platforms exceed 60
4 inches in vertical rise above the adjacent grade or where the attractions would require a fundamental
5 alteration in the nature of the activity to provide access are not subject to accommodation through
6 a ramp or other vertical means of access. Current examples of such rides are set forth below:

- 7 1) Big Eli
- 8 2) Clown Glass House
- 9 3) Cuckoo House
- 10 4) Dragon Wagon
- 11 5) EuroSlide
- 12 6) Experience
- 13 7) Free Fall
- 14 8) Fun Train
- 15 9) Ghost Pirates
- 16 10) Goliath Slide
- 17 11) Hi Miler
- 18 12) HydroSlide
- 19 13) Inverter
- 20 14) Kamikaze
- 21 15) Li'l Raiders
- 22 16) Mardi Gras
- 23 17) Moscow Circus
- 24 18) StarShip 2000
- 25 19) Survival Island
- 26 20) Tilt-a-Whirl

27 **B. MIDWAY ACCESS**

28 26. RCS shall prepare and maintain written materials and media materials which

1 can be used in training current and future employees on the procedures and policies regarding
2 Midway Access. Said training shall be mandatory for all employees on a yearly basis with reviews
3 and on-the-job training as necessary. Said training shall include operational guidelines; use of
4 appropriate language, in the policies, procedures and signage at or near the Midway; and the
5 procedures for responding to special guest requests based upon the nature of the disability, including
6 temporary movement of fencing, gates or other barriers normally required because of regulation or
7 safety.

8 27. RCS shall provide appropriate signage for Main Midway Access Points
9 indicating routes, their accessibility to disabled patrons and applicable instructions.

10 28. The foregoing Midway Access obligations shall commence August 1, 2006
11 or the commencement of the California State Fair 2006.

12 **C. CONCESSIONS (Ticket Booths, Games and Food)**

13 29. The following obligations shall commence August 1, 2006 or the
14 commencement of the California State Fair 2006:

15 30. All concessions trailers operated by RCS, or displaying an RCS logo, shall
16 have at least one counter that is mounted at a maximum height of 36 inches above the finished grade.
17 Use of folding shelves or portable tables mounted or situated immediately below one of the main
18 service windows for each concession trailer shall be sufficient compliance for purposes of this
19 paragraph.

20 31. At least 10%¹⁰ of the seating for portable dining and picnic tables supplied by
21 RCS at the State Fair shall be accessible, and to the maximum extent feasible, RCS shall provide at
22 least one table in each location where portable dining or picnic tables are provided on the MIDWAY.
23 "Accessible tables" shall have a minimum knee space of 27 inches that extends a minimum of thirty
24 inches wide and that projects a minimum of 19 inches back from the front face. Such tables shall
25 be connected to an accessible route.

26
27
28 ¹⁰ **COURT:** The court understands that the 10% calculation identified here will be based
on the total number of individual seats provided, rather than number of tables, without any rounding
off. For example, if 120 seats (e.g., 24 tables of 5) are available, 12 seats will be accessible.

32. Prepare and maintain written materials and media materials which can be used in training current and future employees on the procedures and policies regarding Concessions. Said training shall be mandatory for all employees on a yearly basis with reviews and on-the-job training as necessary. Said training shall include operational guidelines; use of appropriate language, in the policies, procedures and signage at or near the Concessions; and the procedures for responding to special guest requests based upon the nature of the disability, including temporary movement of fencing, gates or other barriers normally required because of regulation or safety. A special section of the operating procedures for each applicable concession shall include the appropriate text shall be maintained on a yearly basis at a central location and available for inspection and training.

33. RCS shall provide appropriate signage for applicable CONCESSIONS set forth below indicating their accessibility to disabled patrons and applicable instructions. Said signage shall incorporate the regulatory and manufacture¹¹ stipulations and any additional accessibility instructions or depictions shall not be inconsistent therewith. Said text may be incorporated into existing signage with similar graphics as are now used for signage consistency and company colors and logos.

- 1) Fun Fotos
- 2) Guest Relations
- 3) Big Dogs
- 4) Junior Hot Shots
- 5) Race Time
- 6) Racers Town
- 7) Squeezer's Lemonade
- 8) Sugar Babes
- 9) Kiddie Shack

D. CONTRACTS WITH CONTRACTORS AND SUBCONTRACTOR

34. RCS will incorporate into all contracts with contractors and sub-contractors

¹¹ **COURT:** The court reads this word as "manufacturer."

1 that they comply with the Americans with Disabilities Act and the applicable RCS accessibility
2 obligations agreed to herein. The contractual language will include the following:

3 *Contractor shall utilize the premises in an orderly manner and in compliance with all present and*
4 *future applicable Federal, State and local statutes, ordinances, rules and regulations, including the*
5 *proper possession of any applicable licenses or permits. Contractor shall further comply with the*
provisions of the Americans with Disabilities Act including local and national accessibility requirements.

6 The requirements under this provision shall first apply to the 2006 Carnival season
7 commencing February 1, 2006.

8 **E. TICKET BOOTHS**

9 35. RCS agrees to include an accessible ticket booth at the location of each ticket
10 booth cluster on the Midway .

11
12 **F. OPTION TO CLOSE FACILITIES.**

13 36. In lieu of making modification to any particular ride, facility or amenity
14 called for by this decree, the RCS may choose to sell or permanently close such facility or
15 amenity from public use.

16 **G. ENFORCEMENT**

17 37. Should any Plaintiff in the future become aware of any facts or conditions
18 relating to the RCS that may give rise to a claim that RCS has failed to comply with any of the
19 injunctive relief provisions set forth herein, such Plaintiff shall, prior to seeking enforcement from
20 this Court, provide notice to RCS at its current address as registered with the Arizona Secretary of
21 State and to Defendant's current counsel, Boyd Jensen, Esq., in writing, addressed to his then current
22 addresses as registered with the State Bar. Defendant shall have sixty (60) days, following receipt
23 of such notification to undertake to correct the alleged violation and/or respond to Plaintiffs'
24 allegations. Any response made by Defendant shall be in writing, addressed to Plaintiffs' counsel,
25 Tim Thimesch of the Thimesch Law Offices, at his then current address registered with the State
26 Bar. Plaintiffs' counsel agrees to contribute pro bono up to three hours in any given calendar year
27 toward these informal negotiation efforts. If such Plaintiff determines, in his or her own good faith
28 discretion, that the matter(s) are not resolved by Defendant's response, such Plaintiff shall be

1 permitted to file a noticed motion under the current case number of this action seeking enforcement
2 of this CONSENT DECREE. The prevailing party in such motion proceedings, whether in full or
3 in part, may be entitled to an award of reasonable attorney fees, litigation expenses and costs for such
4 motion, which motion proceedings shall be pursuant to the normal prevailing party standards that
5 applied before the action's dismissal.

6 38. The Parties have not reached an agreement regarding the statutory damages
7 claims of the ISC plaintiffs (ISC, INC.; RUSS BOHLKE; CHRISTINE FITZGERALD; and
8 CONNIE ARNOLD) or the claims of all Named Plaintiffs for attorney fees, litigation expenses and
9 costs for this case, and reserve all such issues for trial or appropriate disposition. The Parties have
10 recently settled the individual damage claims of plaintiffs LARRY MCIVER and HOLLYNN D'LIL,
11 which settlement is contingent upon the execution of a standard release, the Court's approval of this
12 Consent Decree, and payment of consideration.

13 **VII. ATTORNEYS' FEES AND COSTS**

14 39. Upon Court Approval of this Consent Decree Defendant will pay plaintiffs'
15 counsel's reasonably incurred interim statutory attorneys fees, litigation expenses and costs incurred
16 in the McIver and two ISC Actions, if the Parties reach agreement on the total amount owed, within
17 60 days after Court Approval. Such fees shall be paid within 30 days of reaching an agreement.

18 40. If the Parties do not reach agreement on the amount of reasonable interim
19 attorney fees, litigation expenses and costs within 60 days after Court Approval, Plaintiffs' Counsel
20 may thereafter file within 60 days a Motion to recover such fees, litigation expenses and costs
21 (including any available enhancement) for determination by the Court. Any litigation expenses,
22 including expert fees and costs, attorney fees and court costs may be awarded by the court pursuant
23 to Christianberg Garment Co. v. EEOC, 434 U.S. 412 (1978) or other standard deemed applicable
24 by the court.

25 41. Notwithstanding any statement in this Decree regarding Defendants' dispute
26 of the allegations and/or non-admission and denial of liability, the Parties agree that Named Plaintiffs
27 have prevailing party standing to make a motion for reasonable fees, litigation expenses and costs.
28 Ray Cammack reserves all rights to oppose such a motion.

1 42. The determination shall be an order appealable directly to the Ninth Circuit
2 Court of Appeals.

3
4 **VIII. COURT APPROVAL OF CONSENT DECREE**

5 Within thirty (30) days following Ray Cammack's approval of this Consent Decree, the
6 Parties shall jointly move the Court for an Order granting its Approval. The Parties agree to seek
7 such Approval from the Honorable Kimberly Mueller, Magistrate Judge, U.S. District Court for the
8 Eastern District of California. Magistrate Judge Mueller has indicated her willingness to oversee the
9 approval and enforcement process, and she possesses knowledge of this case's history and an
10 understanding of the numerous technical and legal issues presented in this case.

11 **IX. CONTINUING JURISDICTION**

12 43. The Court shall retain continuing jurisdiction to interpret and enforce the
13 Consent Decree as provided herein and to determine fees, litigation expenses and costs, if necessary.
14 The Court shall also retain jurisdiction to resolve Plaintiff's remaining claims for statutory and
15 compensatory damages.¹² Each and all of the agreements of the Parties in this Consent Decree are
16 contingent upon the Court granting leave for Plaintiffs to file a Third Amended Complaint as
17 contemplated herein, and the Court's acceptance of aforesaid continuing jurisdiction.

18 **X. MISCELLANEOUS**

19 44. **Counterparts.** This Consent Decree may be executed in counterparts, each
20 of which will be considered an original, but all of which, when taken together, will constitute one
21 and the same instrument. Facsimile signatures shall be considered valid as of the date thereof,
22 although the original signature pages shall thereafter be appended to this Consent Decree and filed
23 with the Court.

24 45. **Interpretation .** The language of this Consent Decree will be construed as
25 a whole according to its fair meaning, and not strictly for or against any of the Parties. The headings
26 in this Consent Decree are solely for convenience and will not be considered in its interpretation.
27

28

¹² **COURT:** As of September 26, 2005, plaintiffs' damages claims have settled.

1 Where required by context, the plural includes the singular and the singular includes the plural. This
2 Consent Decree is the product of negotiation and joint drafting so that any ambiguity will not be
3 construed against any Party.

4 46. **Severability** . In the event any portion of this Consent Decree is deemed to
5 be unenforceable, or is in conflict with applicable law, the remainder of this Consent Decree will be
6 enforced and will remain in full force and effect.

7 47. **Non-Determination**. The Court has made no findings concerning alleged
8 violations of any law, whether state or federal, local, regulation, order or rule at this time, and the
9 Parties expressly reserve the right to litigate these matters if this Consent Decree does not receive
10 Court Approval. The Parties agree that nothing in this Consent Decree may be interpreted as an
11 admission by any Party of any fact, legal principle, or conclusion. If, for any reason, settlement is
12 not effectuated, or Court Approval obtained, no evidence of this proposed Consent Decree shall be
13 admissible for any purpose in the McIver Action, either of the ISC Actions, or other actions to be
14 brought by Named Plaintiffs or Plaintiffs' Counsel.

15 48. **Entire Agreement** . This Consent Decree expresses and constitutes the sole
16 and entire agreement between the Parties and supersedes all prior agreements, negotiations and
17 discussions between the Parties and/or their respective counsel with respect to the subject matter of
18 the McIver Action, the ISC Actions, and/or this Consent Decree. The Consent Decree supersedes
19 any prior or contemporaneous oral or written agreements or understandings between and among the
20 Parties and/or counsel for the Parties regarding the subject matter of the McIver Action, the ISC
21 Actions, and/or this Consent Decree.

22 49. **Additional Documents** . To the extent any documents are required to be
23 executed by any of the Parties to effectuate this Consent Decree, each Party hereto agrees to execute
24 and deliver such and further documents as may be required to carry out the terms of this Consent
25 Decree.

26 50. **Ray Cammack's Approval** . The signature herein below of RCS' Chief
27 Executive Officer and President, Guy Leavitt, indicates that he has obtained prior approval of this
28 document through RCS' Board of Directors.

1 51. **Authority** . Each Party represents to all other Parties that such Party has the
2 full power and authority to enter into this Consent Decree, that the execution and delivery thereof
3 will not violate any agreement to which such Party is a party or by which such Party is bound, and
4 that this Consent Decree, as executed and delivered, constitutes a valid and binding obligation of
5 such Party, enforceable in accordance with its terms. The signatories to this Consent Decree
6 expressly warrant that they have been authorized to execute this Consent Decree and to bind their
7 respective Parties to the terms and provisions herein.

8 52. **Knowing Agreement** . Each Party to this Consent Decree acknowledges that
9 it has been represented by legal counsel, and that each Party has reviewed, and has had the benefit
10 of legal counsel's advice concerning, all of the terms and conditions of this Decree.

11 53. **Successors**. This Consent Decree shall be binding upon and inure to the
12 benefit of the respective heirs, successors, assigns and representatives of the Parties. To the extent
13 permitted by law, the Parties intend that this Consent Decree and Order shall additionally be binding
14 upon all persons with disabilities similarly situated to the Named Plaintiffs in relation to injunctive
15 relief claims, and that the terms of this Consent Decree shall have the effect of res judicata and/or
16 collateral estoppel against injunctive relief claims. However, the Decree shall not preclude claims
17 for damages by persons with disabilities, including under tort or as provided by statute.¹³

18 54. **Non-Application to Defendants State of California and California**
19 **Exposition & State Fair**. No part of this Consent Decree shall be construed to affect Named
20 Plaintiffs' ongoing legal claims, or any actions, against Defendants State of California and California
21 Exposition & State Fair, which shall remain in full force and effect, except as to the Title II
22 obligations of such defendants in relation to the rides, attractions and concessions specifically
23 operated by RCS, as specified herein.¹⁴

24 55. **Appealability**. Unless otherwise stated, any order issued by the Court
25 pursuant to this Consent Decree shall be appealable to the Ninth Circuit Court of Appeals.
26

27 ¹³ **COURT:** See footnote 5 above.

28 ¹⁴ **COURT:** Concurrently with its qualified approval of this Consent Decree, the court is
approving a Consent Decree as to the State of California and California Exposition & State Fair.

1 56. **Deadlines .** Any deadlines imposed under this Decree shall be subject to the
2 extensions imposed by Fed. Rules of Civ. Pro., Rule 6.

3 57. **Consent Order Binding on Parties and Successors in Interest.** The Parties
4 agree and represent that they have entered into this CONSENT DECREE voluntarily, under no
5 duress, and wholly upon their own judgment, belief, and knowledge as to all matters related to this
6 CONSENT DECREE, after having received full advice from counsel.

7 58. This CONSENT DECREE and Order shall be binding on Plaintiffs LARRY
8 MCIVER and HOLLYNN D'LIL,¹⁵ Defendant RAY CAMMACK SHOWS, INC.; and, any
9 successors in interest. RAY CAMMACK SHOWS, INC is one of several corporations or limited
10 liability companies working with RAY CAMMACK SHOWS, INC. These companies are referred
11 to together and individually as RAY CAMMACK SHOWS, INC. or Defendant(s). The Parties have
12 a duty to so notify all such successors in interest of the existence and terms of this CONSENT
13 DECREE and Order during the period of the Court's jurisdiction of this CONSENT DECREE. To
14 the extent permitted by law, the Parties intend that this CONSENT DECREE and Order shall
15 additionally be binding upon all persons with disabilities similarly situated to Named Plaintiffs, and
16 that the terms shall have the effect of *res judicata* and/or collateral estoppel.¹⁶

17 59. **Joint Preparation And Severability:** This CONSENT DECREE and Order
18 is deemed jointly prepared by all Parties and shall not be strictly construed against any party as its
19 drafter. If any term of this CONSENT ORDER is determined by any court to be unenforceable, the
20 other terms of this CONSENT ORDER shall nonetheless remain in full force and effect.

21 60. **Signatories Bind Parties.** Signatories on the behalf of the Parties represent
22 that they are authorized to bind the Parties to this CONSENT DECREE and Order. **Counterparts.**
23 This CONSENT DECREE may be executed in counterparts signatures, and such signatures may be
24 attached in counterparts, each of which shall be deemed an original, and which together shall
25

26
27 ¹⁵ **COURT:** The court assumes reference to the ISC Plaintiffs (ISC, Inc., Russ Bohlke,
28 Christine Fitzgerald, Connie Arnold, and Jeffrey Evans) has been inadvertently omitted, and thus
reads this paragraph as incorporating said plaintiffs.

¹⁶ **COURT:** See footnote 5 above.

1 constitute one and the same instrument. Such counterparts may be signed as faxed signatures, which
2 shall have the same force and effect as the original.

3
4 Dated: September 16, 2005

Thimesch Law Offices
TIMOTHY S. THIMESCH

6
7 

8 Attorney for Plaintiffs

9 Dated: _____, 2005

10 Plaintiff HOLLYNN D'LIL

11 Dated: _____, 2005

12 Plaintiff LARRY MCIVER

13 Dated: _____, 2005

14 Plaintiff CONNIE ARNOLD

15 Dated: _____, 2005

16 Plaintiff RUSS BOHLKE

17 Dated: _____, 2005

18 Plaintiff CHRISTINE FITZGERALD

19 Dated: September 16, 2005

20 

21 Plaintiff JEFFREY EVANS

22 Dated: _____, 2005

23 Plaintiff ISC, INC.
Authorized Representative
Print Officer's Name: _____
Officer's Title: _____

25 Dated: _____, 2005

26 BOYD JENSEN, ESQ.
BETTY FRACISCO, ESQ.
GARRETT & JENSEN

27
28 Attorneys for Defendant
RAY CAMMACK SHOWS, INC.

1 Dated: _____, 2005

2 Defendant RAY CAMMACK SHOWS, INC.
3 By Guy Leavitt, CEO and President of
4 RAY CAMMACK SHOWS, INC.¹⁷

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¹⁷ **COURT:** The court acknowledges receipt of a copy of the proposed consent decree signed by all parties and counsel, and submitted to the court on September 21, 2005.